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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130103003-4550-02]

RIN 0648-BC77

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Amendment 3

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS approves and implements measures in Amendment 3 to the Spiny Dogfish Fishery Management Plan, which was developed by the Mid-Atlantic and New England Fishery Management Councils. The approved management measures include implementing a research set-aside program, updating essential fish habitat definitions, allowing rollover of specifications, and eliminating the seasonal allocation of the commercial quota. These administrative measures are intended to improve the implementation of the Spiny Dogfish Fishery Management Plan and provide benefits to the spiny dogfish fishery.

DATES: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Copies of the amendment, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The amendment is also

accessible via the Internet at: <http://www.nero.noaa.gov>.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of this rule. Copies of the FRFA and the Small Entity Compliance Guide are available from the Regional Administrator, Greater Atlantic Regional Fisheries Office, NMFS, 55 Great Republic Drive, Gloucester, MA 01930, and are available via the Internet at: <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281-9273.

#### SUPPLEMENTARY INFORMATION:

##### Background

This final rule approves and implements measures contained in Amendment 3 to the Spiny Dogfish Fishery Management Plan (FMP), which was approved by NMFS on behalf of the Secretary of Commerce on June 20, 2014. Amendment 3 was developed and submitted to NMFS by the Mid-Atlantic and New England Fishery Management Councils, who jointly manage the spiny dogfish fishery. A Notice of Availability of the amendment published in the Federal Register on March 26, 2014 (79 FR 16752), with public comments accepted through May 27, 2014. A proposed rule to implement the measures contained in Amendment 3 published in the Federal Register on April 10, 2014 (79 FR 19861), with public comments accepted through May 12, 2014. The Councils recommended, and NMFS proposed, the following measures: 1) Adding an option for allocation of a small percentage (up to 3 percent) of the commercial quota for use in the Research Set-Aside (RSA) Program; 2) updating the definitions of essential fish habitat (EFH) for all life stages of spiny dogfish; 3) maintaining existing annual management measures until replaced via rulemaking (i.e., specifications

rollover); and 4) eliminating the seasonal allocation of the commercial quota in order to minimize conflicts with spiny dogfish fishing operations that occur in both state and Federal waters. Details concerning the development of Amendment 3 and the proposed measures were contained in the preamble of the proposed rule and are not repeated here.

## Approved Measures

### Research Set-Aside

NMFS has approved a new RSA program under the Spiny Dogfish FMP. A number of FMPs include an RSA program, in which a percentage of the quota may be set aside each year to fund research. In the annual specifications process, the Councils may set aside up to 3 percent of the spiny dogfish commercial quota as RSA quota. The revenues generated by those landings will be used for scientific research aimed at improving our understanding of the spiny dogfish stock and its related fisheries, consistent with the Councils' research priorities.

### Essential Fish Habitat

NMFS has approved the updated spiny dogfish EFH definitions and descriptions contained in Amendment 3. The Magnuson-Stevens Fishery Conservation and Management Act requires that EFH be defined for all managed stocks, and that it should be periodically reviewed and updated. The updated EFH information includes updated text and maps, using the most recent fishery-independent data, to describe EFH for the following spiny dogfish size and sex categories: Recruits (juvenile males and females < 36 cm); sub-adult females (36-79 cm); sub-adult males (36-59 cm); adult females (>79 cm); and adult males (>59 cm). Detailed EFH maps and text descriptions are provided in the supporting documents (see ADDRESSES).

### Rollover of Specifications

The specifications (annual catch limit, commercial quota, etc.) of the current fishing year will carry forward to the subsequent fishing year, in the event that rulemaking and implementation of revised specifications are delayed. If the implementation of new final specifications is delayed beyond the start of the new fishing year (May 1), the previous year's specifications would apply to the new fishing year until replaced by the final rule.

#### Commercial Quota Allocation

The Spiny Dogfish FMP's seasonal quota allocation is removed, and replaced with a single, annual coastwide commercial quota. The Federal spiny dogfish fishery will now only be closed when 100 percent of the coastwide commercial quota is projected to be landed. The states, through the Atlantic States Marine Fisheries Commission's Interstate Spiny Dogfish FMP, will be responsible for controlling their spiny dogfish allocations to ensure the participation of all states.

#### Comments and Responses

A total of five comments were collectively received on the Notice of Availability and proposed rule for Amendment 3. One comment was submitted by the Commission, and four comments were submitted by members of the general public. One of the public commenters did not provide comments relevant to the proposed measures, so no response is given. This section summarizes the comments contained in the remaining individual comment letters and NMFS' response to those comments. No changes were made to the final rule as a result of the comments received.

Comment 1: The Commission expressed support for all of the measures in Amendment 3. Specifically, they commented that the measure removing the seasonal allocation of the Federal commercial quota would improve alignment with the Commission's Spiny Dogfish

FMP, and reduce confusion within the fishing industry over differing regulations in Federal and state waters. They stated that the other measures in Amendment 3 would not negatively impact state management of spiny dogfish.

Response: NMFS agrees with the Commission's assessment of the amendment's potential impacts on state management of the spiny dogfish fishery. Part of the purpose of Amendment 3 was to improve alignment with the Commission's Interstate Spiny Dogfish FMP.

Comment 2: Three public commenters opposed the preferred alternative of allowing up to 3 percent of the commercial quota to be specified as RSA quota. They favored an alternative that would allow up to 5 percent of the quota to be used for RSA, citing the comparatively low value of spiny dogfish, and a high need for more research.

Response: NMFS acknowledges that there are research priorities for spiny dogfish and the 5-percent RSA alternative would potentially allocate more funds for spiny dogfish research. However, NMFS disagrees that a 3-percent RSA quota would be limiting given the commercial quotas currently in place. For example, the spiny dogfish commercial quota for fishing year 2014 is currently specified at 41.784 million lb (18,953 mt), 3 percent of which would equal 1.254 million lb (569 mt) worth approximately US\$250,000. The proposed RSA program is an appropriate balance between providing adequate research opportunities and maximizing optimum yield and, therefore, is consistent with the goals of the Spiny Dogfish FMP, other FMPs with an RSA component, and the Magnuson-Stevens Act.

Comment 3: One public commenter opposed the proposed measure that would allow the rollover of specifications, arguing that it could provide incentives for managers to deliberately delay the rulemaking progress, particularly if new specification measures would result in negative economic impacts.

Response: The specification rollover provision exists in many of the Councils' FMPs, and this measure was included in Amendment 3 to make the Spiny Dogfish FMP more consistent with those other FMPs. This measure is intended to help control fishing mortality on the stock in the event that rulemaking for updated specifications is delayed beyond the start of the new fishing year. Currently, under the status quo alternative, if rulemaking is delayed, the spiny dogfish fishery operates without any effective quota, and NMFS has no authority to close the fishery. The provision does not excuse the Councils or NMFS from their responsibilities to recommend annual management measures consistent with the requirements of the Spiny Dogfish FMP and the Magnuson-Stevens Act.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator determined that this rule is consistent with the Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This action has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) in support of this action. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' response to those comments, relevant analyses contained in the action and its EA, and a summary of the analyses completed to support the action in this rule. A copy of the analyses and the EA are available from the Council (see ADDRESSES). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the

legal basis for this rule is contained in the preamble to the proposed rule and this final rule and is not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

Five comments were received on the proposed rule. For a summary of the comments, and NMFS' responses, see the Comments and Responses section above. The comments did not raise any issues or concerns related to the IRFA or the economic impacts of the rule more generally, and no changes were made to the rule as a result of the comments.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

This rule will impact fishing vessels, including commercial fishing entities. In 2012, 2,666 vessels held spiny dogfish permits. However, not all of those vessels are active participants in the fishery; only 489 vessels landed spiny dogfish in 2012. If two or more vessels have identical owners, these vessels should be considered to be part of the same firm, because they may be the same entity. When permit ownership data is considered, in 2012, 1,976 fishing firms held at least one spiny dogfish permit. According to the Small Business Administration (SBA), firms are classified as finfish or shellfish firms based on the activity from which they derive the most revenue. Using the \$5M cutoff for shellfish firms (NAICS 114112) and the \$19M cutoff for finfish firms (NAICS 114111), there are 1,953 directly regulated small entities and 23 directly regulated large entities. There are 488 active fishing firms, of which 482 are small entities and 6 are large entities. On average, for small entities, spiny dogfish is responsible for a small fraction of landings, and active participants derive a small share of gross receipts from the spiny dogfish fishery. While all 1,953 directly regulated small entities will be affected

by Amendment 3, many of these small entities do not currently participate in this fishery and would be likely to experience only negligible economic impacts, if any.

#### Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This rule does not duplicate, overlap, or conflict with other Federal rules.

#### Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

According to the Councils' analysis in the EA, Amendment 3 is not expected to result in any direct negative or positive economic impacts. The management measures and alternatives included in this action are administrative in nature, and have no inherent direct economic costs or benefits. Possible indirect, minor positive economic impacts are anticipated from the RSA and EFH alternatives. Under the RSA alternatives, the preferred alternative (Alternative 1b) of allowing an RSA quota of up to 3 percent of the commercial quota, and Alternative 1c, which would have allowed up to 5 percent of the commercial quota for RSA, are expected to result in minor positive economic impacts relative to no action (i.e., no RSA; Alternative 1a). This conclusion was based on cases where research funded by RSA would result in improved management of the spiny dogfish fishery. Both the no action (i.e., no update to EFH; Alternative 2a) and preferred (i.e., updated EFH; Alternative 2b) EFH alternatives may result in indirect, minor positive economic impacts, as the designation of EFH can inform Federal activities and help minimize potentially negative habitat impacts. Under the commercial quota allocation alternatives, the no action alternative (i.e., maintain current seasonal allocation of the quota; Alternative 4a) was expected to result in indirect minor negative economic impacts in situations where misalignment in Federal (Council) vs. state (Commission) fishery closures could result in



lost revenues. The preferred alternative (i.e., remove allocation of the quota; Alternative 4b) is anticipated to alleviate the potential negative economic impacts associated with the current management misalignment. Both the no action alternative (i.e., no rollover of specifications; Alternative 3a) and the preferred alternative (i.e., allow rollover of specifications; Alternative 3b) associated with the rollover of specifications from one year to the next in the event of delayed implementation of specifications are expected to have no economic impact (positive or negative).

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide was prepared. Copies of this final rule are available from the Greater Atlantic Regional Fisheries Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits for the spiny dogfish fishery. The guide and this final rule will be available upon request, and posted on the Greater Atlantic Regional Fisheries Office’s website at [www.nero.noaa.gov](http://www.nero.noaa.gov).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 9, 2014.

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

**PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.232, revise paragraphs (a), (b), and (e); and add paragraphs (c)(3) and (f) to read as follows:

§ 648.232 Spiny dogfish specifications.

(a) Commercial quota and other specification measures. The Spiny Dogfish Monitoring Committee shall recommend to the Joint Spiny Dogfish Committee a TAL (i.e., annual coastwide commercial quota) and any other measures, including those in paragraphs (a)(1) through (8) of this section, that are necessary to ensure that the commercial ACL will not be exceeded in any fishing year (May 1-April 30), for a period of 1-5 fishing years. If research

quota is specified as described in paragraph (f) of this section, the effective commercial quota will be those commercial landings available after the deduction for the research quota. The measures that may be recommended include, but are not limited to:

- (1) Minimum or maximum fish sizes;
- (2) Seasons;
- (3) Mesh size restrictions;
- (4) Trip limits;
- (5) Research quota set from a range of 0 to 3 percent of the commercial quota;
- (6) [Reserved]
- (7) Other gear restrictions; and
- (8) Changes to AMs and ACT control rules.

(b) Joint Spiny Dogfish Committee recommendation. The Councils' Joint Spiny Dogfish Committee shall review the recommendations of the Spiny Dogfish Monitoring Committee. Based on these recommendations, requests for research quota, and any public comments, the Joint Spiny Dogfish Committee shall recommend to the Councils a TAL, and possibly other measures, including those specified in paragraphs (a)(1) through (8) of this section, necessary to ensure that the ACL specified in § 648.230 will not be exceeded in any fishing year (May 1-April 30), for a period of 1-5 fishing years.

(c) \* \* \*

(3) If the annual specifications are not published in the Federal Register prior to the start of the fishing year, the previous year's annual specifications will remain in effect. The previous year's specifications will be replaced by the current year's specifications as of the effective date of the final rule implementing the current year's specifications.

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(e) Landings applied against the commercial quota. All spiny dogfish landed for a commercial purpose in the states from Maine through Florida shall be applied against the annual coastwide commercial quota, regardless of where the spiny dogfish were harvested.

(f) Research quota. See § 648.22(g).

3. In § 648.233, revise paragraph (a) to read as follows:

§ 648.233 Spiny dogfish accountability measures (AMs).

(a) Commercial EEZ closure. The Regional Administrator shall determine the date by which the annual coastwide quota described in § 648.232 will be harvested and shall close the EEZ to fishing for spiny dogfish on that date for the remainder of the fishing year by publishing notification in the Federal Register. Upon the closure date, and for the remainder of the fishing year, no vessel may fish for or possess spiny dogfish in the EEZ, nor may vessels issued a spiny dogfish permit under this part land spiny dogfish, nor may dealers issued a Federal permit purchase spiny dogfish from vessels issued a spiny dogfish permit under this part.

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4. In § 648.235, remove paragraph (c) and revise paragraph (a) introductory text and paragraph (b) to read as follows:

§ 648.235 Spiny dogfish possession and landing restrictions.

(a) Possession limit. Vessels issued a valid Federal spiny dogfish permit under § 648.4(a)(11) may:

\* \* \* \* \*

(b) Regulations governing the harvest, possession, landing, purchase, and sale of shark fins are found at part 600, subpart N, of this chapter.

[FR Doc. 2014-16477 Filed 07/14/2014 at 8:45 am; Publication Date: 07/15/2014]